

May 13, 1966

(Addressee)

Dear Mr. :

I am taking the liberty of writing to you concerning certain litigative difficulties which we encounter. I intend no criticism of the practices of your agency. Rather the purpose of this letter is to suggest areas in which changes in your procedures would assist us in our defense of claims filed against the United States.

Pursuant to the provisions of 5 U.S.C. 91, each agency is required to submit litigation reports to the Department relative to any claim filed against the United States. As a matter of normal procedure, the Department makes a "Call" (Form No. CV-62, Rev. 1-11-62) on each involved agency, after a claim has been filed in the Court of Claims, setting out what the litigation report should contain in the way of information, documents, and data necessary to properly defend against the claim.

In general, the litigation reports we receive from governmental agencies are sufficiently detailed to enable us to prepare a responsive pleading and to suggest areas in which discovery and pretrial investigation are necessary. However, we are encountering some problems in the pretrial investigation period because of the destruction of records, documents, and other data concerning possible claims against the United States before the statutes of limitations have expired on such claims. This has been particularly noticeable relative to claims arising from government contracts where the combined claim, period, as a result of administrative proceedings, sometimes covers twelve years or more. In addition, we often encounter situations where the agency forwards to us its claim file but not inspector's diaries, daily report, progress photographs and other documentation which is necessary for trial of the claim. The latter records remain in the field office or are transferred to a records center where they are held for a limited period and then destroyed.

Because of the litigative difficulties created by early destruction of records, you might wish to consider promulgating regulations requiring the retention of all papers and documents, pertinent to actual and potential claims against the United States, for a minimum periods of seven (7) years after final agency action is taken.

Litigation in the Court of Claims has also indicated another area where agency procedures affect our defense of claims against the United States. In support of their claims, contractors have come to rely heavily upon cost and engineering data which, in many cases, they have prepared many years after the claims arose and which abound in conjecture and speculation. When claims are litigated years later, we sometimes experience difficulty in collecting the necessary cost and engineering data. This difficulty is usually occasioned by inadequate exploration and preparation of cost and engineering data during contract performance when the claims arise. You might wish to consider requiring complete cost and engineering data from contractors on claims when presented and improving administrative procedures for securing and analyzing such data.

It is felt that improvement in the two areas discussed above will inure to the best interests of the Government when the Department is called upon to defend claims filed against the United States.

Yours very truly,

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